

NOT TO BE PUBLISHED

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

----

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM ALBERTO JOPLIN,

Defendant and Appellant.

C034796

(Super. Ct. Nos. 99F978,  
99F9041)

Pursuant to a negotiated plea agreement, defendant William Alberto Joplin pleaded guilty to seven offenses in two cases (nos. 99F9041 and 99F978), and the prosecution dismissed other charges in those cases and in other pending cases. Defendant was convicted by his guilty plea of three counts of second degree commercial burglary,<sup>1</sup> three counts of receiving stolen property,<sup>2</sup> and one count of manufacturing a controlled substance other than PCP.<sup>3</sup> The trial court sentenced defendant, as

---

<sup>1</sup> Penal Code sections 459, 460.

<sup>2</sup> Penal Code section 496, subdivision (a).

<sup>3</sup> Health and Safety Code section 11379.6, subdivision (a).

provided in the plea agreement, to state prison for a total of 11 years.

Defendant raises only one issue on appeal. He claims the trial court erred in denying a motion to suppress filed under Penal Code section 1538.5. The motion challenged evidence discovered during successive searches of defendant's house, which he was sharing with a probationer.

The record supports the trial court's ruling that police lawfully searched defendant's house and property, but the record does not show police lawfully searched a locked shed. Since the court should have suppressed evidence derived from the search of the shed, we will reverse and remand to afford defendant an opportunity to withdraw his plea. We will also correct a clerical error in the abstract of judgment.

#### **FACTS**

The trial court held an evidentiary hearing on the suppression motion. Although several defense witnesses testified at the hearing, we must view the record in the light most favorable to the trial court's decision.<sup>4</sup> Accordingly, most of the relevant facts are taken from the testimony of Officer Michael Stufflebeam of the Redding Police Department.

In November 1998, Officer Stufflebeam was investigating commercial burglaries of Pacific Supply. Stufflebeam was aware that at least one large barbecue had been stolen. After learning that someone who lived on Rosswood Street and drove

---

<sup>4</sup> *People v. Jenkins* (2000) 22 Cal.4th 900, 969.

a large red truck was a possible suspect, Stufflebeam went to Rosswood Street to investigate.

On Rosswood Street, Stufflebeam saw a large red truck parked in front of a house and what appeared to be a brick enclosure for a built-in barbecue in the back yard. Stufflebeam learned that the red truck belonged to defendant, that it was defendant's house, and that a probationer named Jeffrey Kroll was also living there.<sup>5</sup> Kroll was on probation for operating a chop shop<sup>6</sup> and was subject to a standard search condition that he submit his person and property under his control "to search and seizure at any time of the day or night by any law enforcement or probation officer with or without a warrant."

On November 19, 1998, police went to defendant's house to conduct a probation search. Officer Stufflebeam contacted Kroll, who was standing inside a detached garage to the side of the house. Kroll told Stufflebeam he was renting a room from defendant and showed the police around. Police began to search the premises.

While the police were searching, defendant arrived home with some friends. Officer Stufflebeam stated the police probably patted them down for weapons and detained defendant's

---

<sup>5</sup> Stufflebeam learned that defendant was on court probation but was not subject to a search condition. For simplicity's sake, references to "probationer" or "probationers" in this opinion are to persons, such as Kroll, who are on probation and subject to a search condition.

<sup>6</sup> Vehicle Code section 10801.

friends to check their identification. Police then told defendant's friends they could leave. Officer Stufflebeam told defendant the police were conducting a probation search and defendant was not under arrest. Stufflebeam explained that the police were suspicious about some property they had found and asked for defendant's help in identifying any property that defendant was suspicious might have been stolen. Initially, defendant was cooperative and accompanied police into the house, although he had questions and concerns about the scope of their search.

In the course of the day, police searched Kroll's room, the common areas of the house, the detached garage, and the front and back areas outside the house. Police did not search defendant's room or the adjoining private bathroom. Police discovered and seized property they believed had been stolen. Some stolen property was found in Kroll's bedroom. Police also found suspected drugs and a glass pipe in a living room closet.

Police also searched a locked shed. Kroll told police that he had gone into the shed on occasion. Kroll had indicated he did not have a key to the shed door but that defendant had a key. Officer Stufflebeam told defendant to open the shed so police would not have to break the lock, and defendant complied.

Inside the shed, police found a cooking range, an outboard motor, a chainsaw, an oven, chimney piping, and new boxes of ceiling fans and light fixtures. A police officer recognized some of these items as being similar to items stolen from a model home under construction. An officer contacted the victim,

who came to the scene and identified several stolen items from the shed as well as a microwave and dishwasher from the kitchen.

The police did not arrest anyone on the day of the first search and did not secure a warrant to search the house until January 1999. In the meantime, however, police officers returned to the house on several occasions based on information they learned during their ongoing investigation.

The police first returned on November 23, 1998, after learning Pacific Supply was missing a wood stove insert. Officer Stufflebeam remembered seeing an insert inside the fireplace in the living room. He spoke with Kroll about the insert, but was unable to remove it because a fire was burning in the fireplace. Stufflebeam told Kroll that police would return the next day to recover the insert.

When officers returned the next day, nobody was home. They entered the house through an unlocked rear window and seized the stove insert. They also seized a roofing plank from outside the house they believed had been stolen.

Police received a report from Sears detailing items stolen from the service center. They confirmed that property recovered in the original search (a lawnmower found in the yard and an outboard motor found in the shed) had been stolen from Sears Service Center. The report included property the police had not been looking for in the original search. They decided to return to the house to see if they could recover additional property stolen from Sears. On December 14, 1998, police returned to the house again. They primarily searched the detached garage, after

first obtaining a key from Kroll. Police seized additional evidence from the garage.

## DISCUSSION

### I. *Motion to Suppress*

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment."<sup>7</sup>

The trial court denied defendant's suppression motion. The court stated that the police had conducted a lawful probation search. The court separately addressed the search of the shed. The court explained that the issue of whether the probationer (Kroll) "had access" to the shed could be argued "either way depending upon what you believe was said at the shed, but . . . the cases don't require the police officer to necessarily take the word of the co-tenant who is not the subject of the search." The trial court concluded, "I think the officer was reasonable based upon the officer's testimony which I believe as to what occurred at the shed door, and therefore I don't believe that evidence needs to be suppressed either."

On appeal, defendant challenges the probation search of November 19, claiming the trial court erred in concluding the police had acted appropriately in the search. Defendant does

---

<sup>7</sup> *People v. Glaser* (1995) 11 Cal.4th 354, 362.

not challenge the subsequent searches on any independent grounds. Accordingly, the latter searches are relevant only insofar as any evidence discovered could be considered the tainted "fruit" of any impermissible police conduct in the first search.

Defendant claims the November 19 search was a pretext to gain evidence against him, although he concedes that pretext searches are not unlawful.<sup>8</sup> Defendant complains that "[a]lthough the pretext search was lawfully initiated, the zeal to gather evidence against [defendant] exceeded the need to respect the boundaries set on Mr. Kroll." Defendant specifically challenges the scope of the probation search and the conduct of police during the search vis-a-vis defendant, his friends, and their personal property. First, we address the scope of the probation search.

#### **A. Scope of Residential Search**

When police conduct a probation search at a residence where nonprobationers are also living, "officers generally may only search those portions of the residence they reasonably believe the probationer has complete or joint control over."<sup>9</sup>

---

<sup>8</sup> In *People v. Woods* (1999) 21 Cal.4th 668 (*Woods*), the state Supreme Court held that the pretextual nature of a probation search does not make it invalid. However, we note that here, the probationer (Kroll) had a criminal record for a theft-related offense and was living at a house where police suspected there was stolen property. From the information police knew at the time of the search, they could have reasonably suspected both defendant and Kroll were involved in the thefts.

<sup>9</sup> *Woods*, *supra*, 21 Cal.4th at page 682.

Individuals who live with probationers "maintain normal expectations of privacy over their persons" and "valid privacy expectations in residential areas subject to their exclusive access or control, so long as there is no basis for officers to reasonably believe the probationer has authority over those areas."<sup>10</sup> "[C]ommon or shared areas of their residence may be searched by officers aware of an applicable search condition."<sup>11</sup>

Defendant claims the police exceeded the scope of the probation search by having him unlock the shed and by removing a tarp covering some wood shingles in the front yard and the cover to a barbecue in the back yard. Only defendant's claim concerning the shed is persuasive.

We reject defendant's claim that police could not remove the covers without establishing probationer Kroll's "access" to the items beneath. While defendant emphasizes it was his house and argues that he had the authority to limit the scope of the search, it is axiomatic that the front and back yards of the house, like the living room and kitchen, are common areas. Since Kroll had joint authority over these areas, police could search them. For the search to be meaningful, police were entitled to remove unsecured coverings. Placement of a cover over an item, like the placement of an item inside a kitchen cupboard, does nothing to suggest a lack of authority or control.

---

<sup>10</sup> *People v. Robles* (2000) 23 Cal.4th 789, 798 (*Robles*).

<sup>11</sup> *Robles, supra*, 23 Cal.4th at page 798.

On the other hand, the record does not contain substantial evidence to support the trial court's finding that police had reason to search the locked shed. The trial court stated it believed Officer Stufflebeam's testimony concerning the circumstances surrounding the search of the shed. But Stufflebeam's testimony does not establish a basis for police to reasonably believe Kroll had joint authority over the shed. The shed was secured with a door lock, to which defendant had the key, and a chain that was unlocked. We agree with the People that defendant's retention of the key to the shed is not itself dispositive of whether police could search it. However, the fact that defendant had the key is significant evidence he retained exclusive authority and control over the shed, in the absence of other solid, credible evidence to the contrary.

In fact, Officer Stufflebeam initially stated that he understood Kroll did not go in the shed without permission, explaining: "The way [Kroll] said it, he went in there occasionally. When he did, he would resecure it with a chain that was around there, so he never went in there without permission, no." Stufflebeam was unsure whether Kroll had previously entered the shed with defendant's key or whether it had been left unlocked in the past. Stufflebeam testified he did not "remember for sure" if Kroll told him the shed was sometimes left unlocked; his recollection was that it was sometimes left unlocked but he was not certain. On further questioning, Stufflebeam explained: "My recollection is I don't remember for sure. That's my best recollection. I don't know

whether for sure that's what he said or he used Joplin's key to get in or how he got in. I'm sure he said he goes in there on occasion."

The People argue that Kroll's "ability to access the shed on occasion made it a location within his reach for purposes of a probation search." The People claim a decision to the contrary would allow probationers to "thwart all probation searches by locking . . . contraband up and giving [a] roommate the key." But if persons sharing a residence with a probationer are to retain any "valid privacy expectations," as the state Supreme Court has emphasized they do,<sup>12</sup> then the risk identified by the People will be present. Some areas, such as the personal bedroom of the nonprobationer, will frequently be off limits in a probation search. Of course, there is nothing to prevent the police from obtaining warrants to search any area or person where there is probable cause to suspect evidence of crime.

The police had no lawful basis for entering the shed, and evidence seized therein should have been suppressed.

#### ***B. Reasonableness of Police Conduct***

Defendant makes several claims challenging police conduct not directly related to the search of the house and grounds. Defendant claims police: (1) temporarily impounded defendant's truck and evinced an intent to search it (although he concedes there is no evidence police actually searched it); (2) improperly conducted a patdown search of defendant

---

<sup>12</sup> *Robles, supra*, 23 Cal.4th at page 798.

and detained him for a prolonged period of time; and  
(3) improperly detained and searched defendant's friends.  
In his reply brief, defendant further emphasizes the length  
of the search and the number of officers involved.

Defendant's claims are deficient. Defendant cannot  
challenge the search or detention of his friends; to do so, he  
must show that the search of a third person violated his own  
privacy rights.<sup>13</sup> Further, defendant does not allege that any  
particular evidence was discovered in the search of him or his  
friends. Only in the case of his own allegedly unlawful,  
prolonged detention does defendant make even a colorable claim  
for the exclusion of evidence. Defendant claims that during his  
supposed detention he pointed out items that might be stolen and  
that the "unlawful seizure and control of [defendant] poisons  
the fruit of any evidence discovered as a result."

The law concerning detentions and other police encounters  
with individuals is well established. Police encounters with  
individuals can be grouped into three categories: consensual  
encounters, detentions and arrests.<sup>14</sup> Consensual encounters  
involve no restraint of an individual's liberty and they may  
be initiated by police officers even though there is no  
suspicion of wrongdoing.<sup>15</sup> Detentions are limited seizures

---

<sup>13</sup> *People v. Ayala* (2000) 23 Cal.4th 225, 254-255 and  
footnote 3.

<sup>14</sup> *Florida v. Royer* (1983) 460 U.S. 491, 497-499 [75 L.Ed.2d  
229] (*Royer*).

<sup>15</sup> *Royer, supra*, 460 U.S. at pages 497-498.

of an individual and are proper if police have a reasonable suspicion that the individual has committed or is about to commit a crime.<sup>16</sup> A person is detained if, in view of all the circumstances surrounding the incident, a reasonable person would believe that he or she is not free to leave.<sup>17</sup>

Defendant's claim of an unlawful, prolonged detention is based primarily on the testimony of defense witnesses the trial court was not obliged to believe. Officer Stufflebeam's testimony provides substantial evidence that defendant was not improperly detained against his will. Stufflebeam testified that "the closest" to a possible detention occurred when defendant and his friends arrived at the house and police checked their identification and might have patted them down. Stufflebeam subsequently told defendant he was not under arrest and asked for his assistance in identifying possible stolen property. Defendant was initially cooperative and accompanied police inside the house. Stufflebeam did not threaten defendant, and defendant did not ask Stufflebeam if he was free to leave. In fact, later in the day, defendant went freely "in and out of the house" and even left in his truck at one point. We also emphasize that while defense witnesses contradicted Stufflebeam's testimony in some regards, defendant himself

---

<sup>16</sup> *Royer, supra*, 460 U.S. at page 498.

<sup>17</sup> *United States v. Mendenhall* (1980) 446 U.S. 544, 554 [64 L.Ed.2d 497].

acknowledged he was not handcuffed and he did not see anyone point a gun at him.

It appears, however, that defendant is also contesting the validity of the probation search as a whole. It is true a probation search may not "be undertaken in a harassing or unreasonable manner."<sup>18</sup> Even assuming the exclusionary rule would apply in cases of egregious police misconduct during a probation search, that is not the case here. There is substantial evidence that the police search of defendant's house and the grounds was neither unreasonable nor harassing.

The search was conducted entirely during the day. The inherent difficulty in identifying and seizing possible stolen property necessitated a fairly lengthy search involving several officers. Even assuming *arguendo* the police should not have conducted patdown searches of defendant and his friends or briefly detained them, it does not amount to such harassment or unreasonable behavior as to invalidate the separate, ongoing search of the property.

### **C. Conclusion**

Evidence discovered in the search of the shed and evidence derived by exploitation of that search should have been suppressed.<sup>19</sup> For example, the search of the shed led directly

---

<sup>18</sup> *Woods, supra*, 21 Cal.4th at page 682.

<sup>19</sup> *People v. Coe* (1991) 228 Cal.App.3d 526, 531; *Wong Sun v. United States* (1963) 371 U.S. 471, 487-488 [9 L.Ed.2d 441].

and immediately to identification of additional stolen property (a microwave and dishwasher) in the kitchen of the house.

Although some of the evidence against defendant need not be suppressed, defendant must be allowed to withdraw his plea. If any challenged evidence was inadmissible, we cannot substitute our judgment for defendant's and conclude he would have entered the plea notwithstanding the trial court's failure to suppress the evidence.<sup>20</sup>

## **II. Clerical Error**

There is one additional issue that we have noticed while reviewing the record. Specifically, there is a clerical error in the abstract of judgment. The abstract reflects that defendant was convicted of count "B12," second degree commercial burglary.<sup>21</sup> In actuality, count 12 was the offense of receiving stolen property,<sup>22</sup> as the information and transcripts of the joint plea canvass and sentencing hearing all reflect. If defendant elects not to withdraw his plea, the trial court should correct the abstract of judgment to correctly reflect the offense.<sup>23</sup>

---

<sup>20</sup> *People v. Hill* (1974) 12 Cal.3d 731, 768-769, overruled on other grounds in *People v. DeVaughn* (1977) 18 Cal.3d 889, 896, footnote 5; *People v. LeBlanc* (1997) 60 Cal.App.4th 157, 168-169.

<sup>21</sup> Penal Code sections 459, 460.

<sup>22</sup> Penal Code section 496, subdivision (a).

<sup>23</sup> See *People v. Rowland* (1988) 206 Cal.App.3d 119, 123.

### DISPOSITION

The judgment is reversed and the cause remanded to the trial court. Upon motion by defendant within 30 days of the date on which this opinion is final, the trial court shall vacate defendant's guilty plea. Upon a subsequent motion by the People, the trial court shall reinstate any charges covered by the negotiated plea agreement, including any charges dismissed under the agreement. The case or cases shall then proceed to trial or other appropriate disposition in accordance with the views discussed in this opinion.

Should defendant not move to withdraw his plea, the trial court shall reinstate the judgment and prepare an amended abstract of judgment, as explained above, that reflects defendant's conviction for count "B12" was for receiving stolen property. The trial court shall then provide a certified copy of the amended abstract to the Department of Corrections.

\_\_\_\_\_  
DAVIS, J.

I concur:

\_\_\_\_\_  
SIMS, Acting P.J.

Hull, J.

I concur.

In *People v. Robles* (2000) 23 Cal.4th 789 the California Supreme Court observed that a person who lives with a probationer who has consented to a search of his residence as a condition of his probation cannot complain of a search of the "common or shared areas of their residence." (*Id.* at p. 798.) And, in a footnote, the court wrote that officers must confine the scope of their search "to those areas of the residence over which they reasonably believe the probationer has access or control . . . ." (*Id.* at p. 796, fn. 3.) An uncritical reading of *Robles* will lead to confusion concerning the permissible scope of a probation search.

*Robles*, in support of its observations I refer to above, cited *People v. Woods* (1999) 21 Cal.4th 668 (*Woods*). But *Woods* said: "It has long been settled that a consent-based search is valid when consent is given by one person with *common or superior authority* over the area to be searched . . . ." (*Id.* p. 675, italics added.)

The *Woods* court continued: "As the United States Supreme Court explains, 'when the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by the defendant, but may show that permission to search was obtained from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected.'

(*United States v. Matlock* [(1974)] 415 U.S. at p. 171, fn. omitted [94 S.Ct. at p. 993]; see *Illinois v. Rodriguez* (1990) 497 U.S. 177, 188-189 [110 S.Ct. 2793, 2801-2801, 111 L.Ed.2d 148].) The 'common authority' theory of consent rests 'on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.' (*United States v. Matlock*, *supra*, 415 U.S. at p. 171, fn. 7 [94 S.Ct. at p. 993]; *People v. Haskett* [(1982)] 30 Cal.3d 841 at p. 856.)"

Thus, *Robles* cannot properly be understood to hold that the permissible scope of a probation search extends to areas over which the probationer has occasionally been granted access but does not have *shared authority, or control*. The distinction is important here.

Stufflebeam testified Kroll said that he went into the shed occasionally, but never without defendant's permission. A casual reading of *Robles* might suggest that the scope of the search thus included the shed, because it was "shared" by Kroll and Kroll had "access" to it, albeit only with defendant's permission. The People's argument that defendant's sole possession of the key to the lock on the shed did not by itself determine that the permissible scope of the search is correct. But the People did not prove that Kroll had joint or shared *authority over or control* of the shed. On this record, that

authority and control remained solely with defendant and Kroll could not, expressly or impliedly, consent to its search.

\_\_\_\_\_  
HULL, J.

I concur:

\_\_\_\_\_  
SIMS, Acting P.J.